IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.887 OF 2005

Ghayalkar Pappu @ Rakesh Anant ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

.....

Mrs.Smita Rajendra Kadu-Gawai for Petitioner.

Mr.V.B.Konde-Deshmukh, A.P.P. for Respondents.

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CORAM: A.M.KHANWILKAR, J.

APRIL 11, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Konde-Deshmukh, A.P.P. waives notice for Respondents.

3. As short question is involved, Petition is taken up for final disposal forthwith, by consent.

4. The short question that arises for consideration in this Petition is: whether the order passed by the Deputy General of Prisons, Western Zone dated 3rd December 2004, can be sustained, which proceeds to reject the prayer for furlough leave on the ground that the surety offered by the Petitioner is driver by profession and that, the surety will not be able to control the Petitioner, if released, because of his dangerous character.

5. Having considered the rival submissions and having regard to the fair submissions made by the learned A.P.P. on the basis of record made available to him by the Investigating Officer that the Petitioner's conduct in jail has also been found satisfactory, in my opinion, the two reasons recorded by the competent Authority cannot be sustained.

6. In the first place, the fact that the surety offered by the Petitioner is driver by profession, is no justification to discard the said

surety, unless, he was disqualified to be surety by any express provision of law. That is not the case of the Respondents. If it is so, that ground will have to be effaced from the record.

7. The second ground which has weighed with the competent Authority that the surety will not be able to control the Petitioner, as the Petitioner's behaviour is dangerous. That fact is belied by the report about the behaviour of the Petitioner in jail, being satisfactory. In any case, if the competent Authority was of the view that the Petitioner will not conduct himself properly while he is released on furlough leave, in such a case, it is open to impose strict condition on such prisoner, but refusing the prayer for furlough leave, in toto, cannot be accepted.

8. Viewed in this perspective, this Petition ought to succeed with direction to the competent Authority to release the Petitioner on furlough leave as per rules by imposing such conditions as may be thought appropriate to ensure that the Petitioner makes himself available and abide by the

strict condition. That can be done by imposing condition such as requiring the Petitioner to report to the nearest Police Station twice a week during specified period or such other condition.

9. Petition succeeds on the above terms.

A.M.KHANWILKAR, J.